

Executive Summary – Enforcement Matter – Case No. 48292
L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
RN100815208
Docket No. 2014-0245-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

Desert Eagle Distributing-Market St. Facility, 6949 Market Avenue, El Paso, El Paso County

Type of Operation:

Wholesale distribution service

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: June 6, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$16,726

Amount Deferred for Expedited Settlement: \$3,345

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$13,381

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: December 18, 2013

Date(s) of NOE(s): January 28, 2014

Executive Summary – Enforcement Matter – Case No. 48292
L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
RN100815208
Docket No. 2014-0245-PST-E

Violation Information

1. Failed to renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on August 31, 2013 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received six fuel deliveries without a valid delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel. Specifically, financial assurance and corrosion protection installation records were not available for review [30 TEX. ADMIN. CODE §§ 334.10(b) and 37.870(a)].
4. Failed to ensure that a legible tag, label, or marking with the UST identification number is identical to the UST identification number listed on the UST registration. Specifically, tanks 1 and 3 were mislabeled [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
5. Failed to designate at least one Class A, Class B, and Class C operator for the Facility [30 TEX. ADMIN. CODE § 334.602(a)].
6. Failed to ensure that the emergency shutoff valves (also known as shear or impact valves) were securely anchored at the bases of the dispensers [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)].
7. Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

- a. Submitted a properly completed UST registration and self-certification form and obtained a valid delivery certificate on February 1, 2014;
- b. Began maintaining UST records at the Facility on March 17, 2014;

Executive Summary – Enforcement Matter – Case No. 48292
L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
RN100815208
Docket No. 2014-0245-PST-E

- c. Properly marked the UST fill ports with an identification number matching the number listed on the UST registration and self-certification form on January 7, 2014;
- d. Conducted training, identified, and designated a Class A, B, and C operator for the Facility on March 28, 2014;
- e. Anchored the shear valves on January 30, 2014; and
- f. Began conducting reconciliation of inventory control records on December 31, 2013.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Steven Van Landingham, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-5717; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Greg LaMantia, Manager, Desert Eagle Distributing-Market St. Facility, 3900 North McColl Road, McAllen, Texas 78501

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	3-Feb-2014	Screening	14-Feb-2014	EPA Due	
	PCW	8-Apr-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility		
Reg. Ent. Ref. No.	RN100815208		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	48292	No. of Violations	7
Docket No.	2014-0245-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Van Landingham
		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$20,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **-10.0%** Reduction **Subtotals 2, 3, & 7** **-\$2,075**

Notes Reduction for high performer classification.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **-\$1,949**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts \$21
Approx. Cost of Compliance \$2,412
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$16,726**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$16,726**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$16,726**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$3,345**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY **\$13,381**

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance
History
Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on August 31, 2013.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

154 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	X
	single event	

Violation Base Penalty \$1,250

One annual event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$125

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent came into compliance on February 1, 2014, after the Notice of Enforcement ("NOE") dated January 28, 2014.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	31-Aug-2013	1-Feb-2014	0.42	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to obtain a current TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is the expiration date of the delivery certificate, and final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$2

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description

Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received six fuel deliveries without a valid delivery certificate.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 3.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 6

44

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$4,500

Six single events are recommended for accepting six fuel deliveries.

Good Faith Efforts to Comply

10.0% Reduction

\$450

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes

The Respondent came into compliance on February 1, 2014, after the NOV dated January 28, 2014.

Violation Subtotal \$4,050

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,600

This violation Final Assessed Penalty (adjusted for limits) \$3,600

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit included in violation no. 1

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.10(b) and 37.870(a)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel. Specifically, financial assurance and corrosion protection installation records were not available for review.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

89 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent came into compliance on March 17, 2014, after the settlement offer dated March 14, 2014

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,125

This violation Final Assessed Penalty (adjusted for limits) \$1,125

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	18-Dec-2013	17-Mar-2014	0.24	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the investigation date, and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$1

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label, or marking with the UST identification number is identical to the UST identification number listed on the UST registration. Specifically, tanks 1 and 3 were mislabeled.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Moderate	
	Actual			
	Potential			0.0%

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		X			
	100% of the rule requirement was not met.				5.0%

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 20 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	Single event	X

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$312

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent came into compliance on January 7, 2014, prior to the NOE dated January 28, 2014.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$813

This violation Final Assessed Penalty (adjusted for limits) \$813

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	18-Dec-2013	7-Jan-2014	0.05	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the investigation date, and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.602(a)

Violation Description

Failed to designate at least one Class A, Class B, and Class C operator for the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2

58 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Two monthly events are recommended based on documentation of the violation during the December 18, 2013 investigation date to the February 14, 2014 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent came into compliance on March 28, 2014, after the settlement offer dated March 14, 2014.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$6,750

This violation Final Assessed Penalty (adjusted for limits) \$6,750

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	18-Dec-2013	28-Mar-2014	0.27	\$7	n/a	\$7
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain the required operator training. The date required is the investigation date, and the final date is the compliance date

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$7

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.45(c)(3)(A)

Violation Description

Failed to ensure that the emergency shutoff valves (also known as shear or impact valves) were securely anchored at the bases of the dispensers.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

43 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended based on documentation of the violation during the December 18, 2013 investigation date to the January 30, 2014 compliance date.

Good Faith Efforts to Comply

10.0% Reduction

\$125

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes

The Respondent came into compliance on January 30, 2014, after the NOE dated January 28, 2014.

Violation Subtotal \$1,125

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$1,112	18-Dec-2013	30-Jan-2014	0.12	\$0	\$9	\$9
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to properly install and maintain emergency shutoff valves at the Facility. The date required is the investigation date, and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,112

TOTAL

\$9

Screening Date 14-Feb-2014

Docket No. 2014-0245-PST-E

PCW

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Policy Revision 3 (September 2011)

Case ID No. 48292

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN100815208

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Van Landingham

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 334.50(d)(1)(B)(ii) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

13 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One monthly event is recommended based on documentation of the violation during the December 18, 2013 investigation date to the December 31, 2013 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$937

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes

The Respondent came into compliance on December 31, 2013, prior to the NOE dated January 28, 2014.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,438

This violation Final Assessed Penalty (adjusted for limits) \$2,438

Economic Benefit Worksheet

Respondent L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility
Case ID No. 48292
Reg. Ent. Reference No. RN100815208
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	18-Dec-2013	31-Dec-2013	0.04	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct inventory control for all USTs. The date required is the investigation date, and the final date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1



Compliance History Report

PUBLISHED Compliance History Report for CN603428129, RN100815208, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN603428129, L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN100815208, DESERT EAGLE DISTRIBUTING-MARKET ST FACILITY	Classification: HIGH	Rating: 0.00
Complexity Points:	4	Repeat Violator:	NO
CH Group:	14 - Other		
Location:	6949 MARKET AVE EL PASO, TX 79915-1111, EL PASO COUNTY		
TCEQ Region:	REGION 06 - EL PASO		

ID Number(s):

AIR NEW SOURCE PERMITS ACCOUNT NUMBER EE1107R

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 14636

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: February 12, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 12, 2009 to February 12, 2014

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Steven Van Landingham

Phone: (512) 239-5717

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period? | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |
| 3) If YES for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)? | N/A |
| 5) If YES , when did the change(s) in owner or operator occur? | N/A |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	February 13, 2009	(726723)
Item 2	August 03, 2009	(764076)
Item 3	November 24, 2009	(783203)
Item 4	July 15, 2010	(830274)
Item 5	July 13, 2011	(937755)
Item 6	December 19, 2011	(970755)
Item 7	September 25, 2012	(1030595)
Item 8	January 10, 2013	(1052900)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
L & F DISTRIBUTORS, LLC DBA	§	TEXAS COMMISSION ON
DESERT EAGLE DISTRIBUTING-	§	
MARKET ST. FACILITY	§	
RN100815208	§	ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2014-0245-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wholesale distribution service at 6949 Market Avenue in El Paso, El Paso County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 2, 2014.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Sixteen Thousand Seven Hundred Twenty-Six Dollars (\$16,726) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid Thirteen Thousand Three Hundred Eighty-One Dollars (\$13,381) of the administrative penalty and Three Thousand Three Hundred Forty-Five Dollars (\$3,345) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Submitted a properly completed UST registration and self-certification form and obtained a valid delivery certificate on February 1, 2014;
 - b. Began maintaining UST records at the Facility on March 17, 2014;
 - c. Properly marked the UST fill ports with an identification number matching the number listed on the UST registration and self-certification form on January 7, 2014;
 - d. Conducted training, identified, and designated a Class A, B, and C operator for the Facility on March 28, 2014;
 - e. Anchored the shear valves on January 30, 2014; and
 - f. Began conducting reconciliation of inventory control records on December 31, 2013.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to renew a previously issued UST delivery certificate by submitting a properly completed registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on December 18, 2013. Specifically, the delivery certificate expired on August 31, 2013.
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on December 18, 2013. Specifically, the Respondent received six fuel deliveries without a valid delivery certificate.
3. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE §§ 334.10(b) and 37.870(a), as documented during an investigation conducted on December 18, 2013. Specifically, financial assurance and corrosion protection installation records were not available for review.
4. Failed to ensure that a legible tag, label, or marking with the UST identification number is identical to the UST identification number listed on the UST registration, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on December 18, 2013. Specifically, tanks 1 and 3 were mislabeled.
5. Failed to designate at least one Class A, Class B, and Class C operator for the Facility, in violation of 30 TEX. ADMIN. CODE § 334.602(a), as documented during an investigation conducted on December 18, 2013.
6. Failed to ensure that the emergency shutoff valves (also known as shear or impact valves) were securely anchored at the bases of the dispensers, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A), as documented during an investigation conducted on December 18, 2013.
7. Failed to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on December 18, 2013.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility, Docket No. 2014-0245-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Danner
For the Executive Director

1/22/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

L & F Dist B By Ty Jus 5/19/2014
Signature Date

Greg LaMantia Manager
Name (Printed or typed) Title
Authorized Representative of
L & F Distributors, LLC dba Desert Eagle Distributing-Market St. Facility

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.